

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
APPENDIX**

75-1227

To be argued by
JONATHAN J. SILBERMANN

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,

Appellee,

-against-

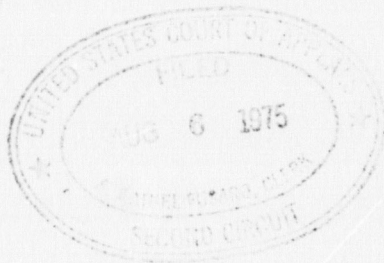
SIR KUE CHIN,

Appellant.

Docket No. 75-1227

APPENDIX TO APPELLANT'S BRIEF

ON APPEAL FROM A JUDGMENT
OF THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK



WILLIAM J. GALLAGHER, ESQ.,
THE LEGAL AID SOCIETY,
Attorney for Appellant
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New York, New York 10007
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JONATHAN J. SILBERMANN,
Of Counsel.

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75 CRIM. 31

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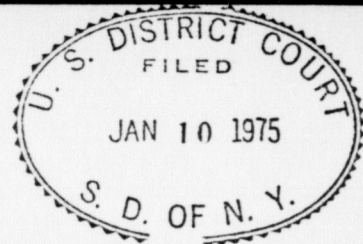
TITLE OF CASE	ATTORNEYS
THE UNITED STATES	<i>For U. S.:</i>
<i>vs.</i>	Richard J. Hoskins AUSA 791-1916
SIR KUE CHIN a/k/a Chan Kau	
	<i>For Defendant:</i>

STATISTICAL RECORD	COSTS	DATE	NAME OR RECEIPT NO.	REC.	DISB.
J.S. 2 mailed	Clerk				
J.S. 3 mailed ✓	Marshal				
Violation	Docket fee				
Title 21					
Sec. 846, 312, 841(a)(1), (b)					
Consp. to viol. Fed. Narco. Laws. (Ct. 1)					
Distr. & possess. w/ intent to distr.					
Heroin. Sch. 1. (Ct. 2)					
(Two Counts)					

DATE	PROCEEDINGS
1-10-75	Filed indictment.
1-13-75	Deft.(atty. present) Pleads not guilty. Motions returnable in 10 days Bail fixed by Mag. continued.(\$2,500.P.R.B.) Case assigned to Judge Conner for all purposes. Bonsal,J.
1-14-75	Filed notice of readiness for trial.
3-14-75	Filed affdvt.of H.S.Sussman,AUSA in support of a writ...Ret.3-19-75...
3-24-75	Deft. & Atty.present..Waives six month rule - trial date May 5-75...Conner,J.
4-17- 75	Filed writ of h/c Ad Test. Ret.3-19-75..
5-5-75	Deft. & atty.present,...JURY TRIAL BEGUN..
5-6-75	Trial cont'd.
5-7-75	Trial cont'd.

(Cont'd. on Page 2)

DATE	PROCEEDINGS
5-8-75	Trial cont'd. and concluded.....Jury Verdict GUILTY both cts. 1 and 2...P.S.I. ordered...Sent. June 20, 1975 at 9:30 a.m. Deft Remanded in lieu of bail fixed at \$10,000 P.R.B. secured by \$2,500. Cash or surety bond to be signed by Deft. his wife and his cousin...Deft and his wife to surrender passports....Conner, J..
5-12-75	Filed Appearance Bond in the sum of \$10,000, secured by \$2,500 cash. Recept. # 5115
5-16-75	Filed remand dated 5-8-75
5-27-75	Filed remand dated 5-8-75 (2nd REMAND)
6-20-75	Filed Judgment (Atty. Roland Thau, present) the deft is committed for imprisonment for a period of ONE YEAR on each of counts 1 and 2, to run concurrently with each other. Pursuant to the provisions of Ti.21. Sec.841, U.S.Code, the deft is placed on Special Parole for a term of THREE YEARS to commence upon expiration of confinement. Conner, J....Ent.6-23-75----- Bail cont'd pending appeal.....
6-20-75	Filed notice of appeal from judgment of May 8-75..Copy given to U.S.ATTY. and mailed to deft's atty.Roland Thau 15 Park Row.N YC...Leave to file notice of appeal without payment granted....Conner, J.
6-25-75	Filed transcript of record of proceedings, dated MAY 5, 6, 7, 8, June 20, 1975



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- -x

UNITED STATES OF AMERICA

- v -

SIR KUE CHIN, a/k/a
Chan Kau,

Defendant.

----- -x

INDICTMENT

75 Cr.

75 CRIM. 31

COUNT ONE

The Grand Jury charges:

1. From on or about the 1st day of November, 1973, and continuously thereafter up to and including on or about the 31st day of January, 1974, in the Southern District of New York, SIR KUE CHIN, a/k/a Chan Kau, the defendant and others to the Grand Jury known and unknown, unlawfully, intentionally and knowingly combined, conspired, confederated and agreed together and with each other to violate Sections 812, 841(a)(1) and 841(b)(1)(A) of Title 21, United States Code.

2. It was part of said conspiracy that the said defendant unlawfully, intentionally and knowingly would distribute and possess with intent to distribute Schedule I narcotic drug controlled substances the exact amount thereof being to the Grand Jury unknown in violation of Sections 812, 841(a)(1) and 841(b)(1)(A) of Title 21, United States Code.

MLM
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COUNT TWO

The Grand Jury further charges:

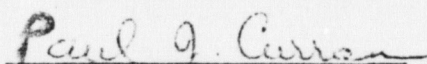
On or about the 4th day of November, 1973
in the Southern District of New York,

SIR KUE CHIN, a/k/a Chan Kau,

the defendant , unlawfully, wilfully and knowingly did
distribute and possess with intent to distribute a
Schedule I narcotic drug controlled substance, to wit,
approximately .04 grams of heroin,
38.7% pure.

(Title 21, United States Code, Sections 812,
841(a)(1) and 841(b)(1)(A).)


FOREMAN


PAUL J. CARRAN
United States Attorney

OVERT ACTS

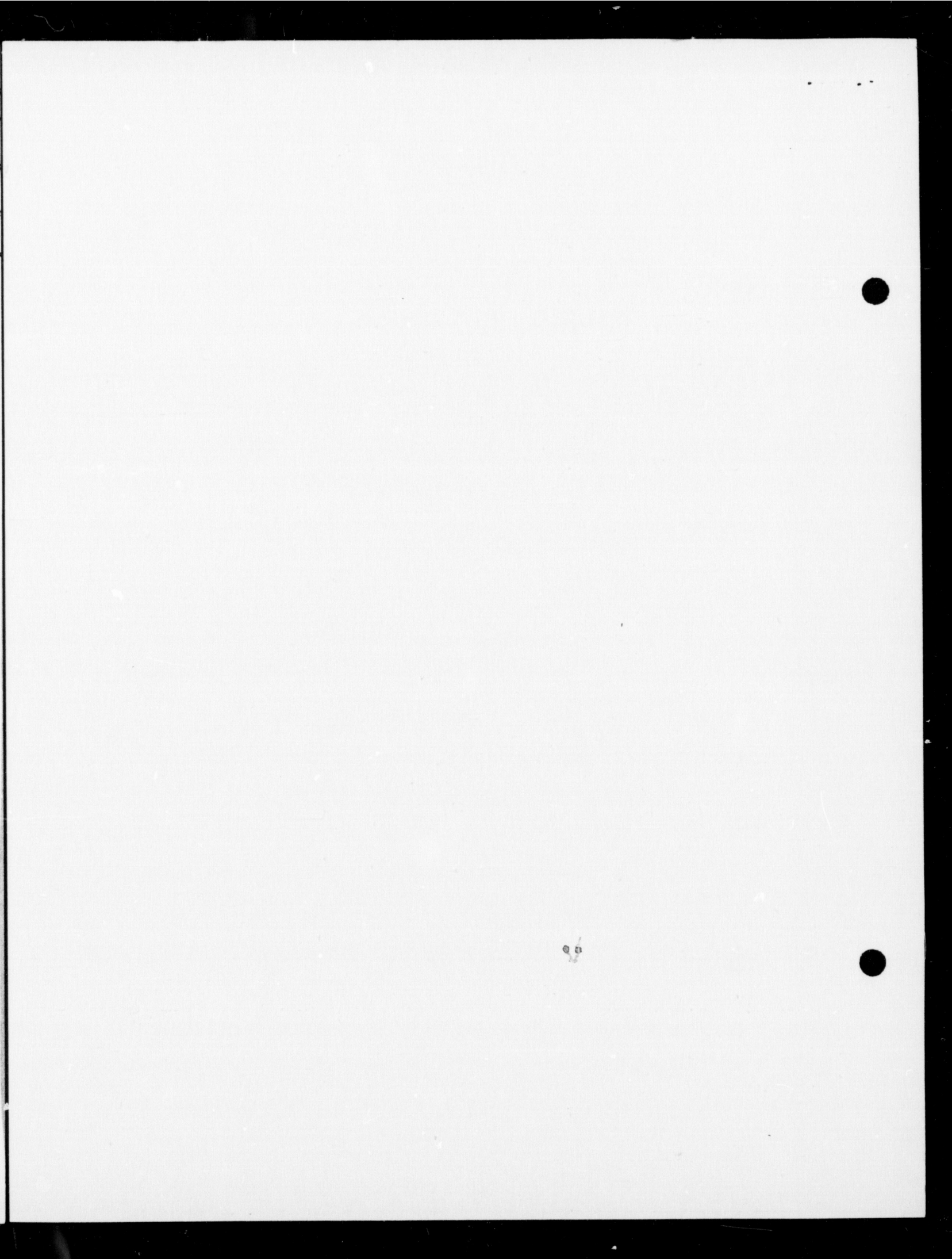
In pursuance of the said conspiracy and to effect the objects thereof, the following overt acts were committed in the Southern District of New York:

1. On or about November 4, 1973, the defendant SIR KUE CHIN, a/k/a Chan Kau, went to the vicinity of Eng Yuet Fa Coffee Shop on Mott Street in New York City;
2. On or about November 21, 1973, the defendant, SIR KUE CHIN, a/k/a Chan Kau, had a conversation with Stephen Tse at Shavey Lee's Restaurant, 32 Mulberry Street, New York City ;
3. On or about November 26, 1973, the defendant, SIR KUE CHIN, a/k/a Chan Kau, had a conversation with Stephen Tse at Shavey Lee's Restaurant, 32 Mulberry Street, New York City;
4. On or about December 12, 1973, the defendant, SIR KUE CHIN, a/k/a Chan Kau, went to the vicinity of Hong Gung Restaurant, 30 Pell Street, New York City;
5. On or about December 20, 1973, the defendant, SIR KUE CHIN, a/k/a Chan Kau, went to the vicinity of the Wah Sun Coffee Shop on Mott Street in New York City.

(Title 21, United States Code, Section 846.)

12/26/75 DEFT (Atty Present) SENTENCE - Imprisonment
for a period of ONE (1) YEAR pursuant to TITLE 21,
Sec. 141, U.S. Code, the DEFT placed LA Special Parole
for a term of THREE (3) YEARS, to commence upon
expiration of confinement. BAIL cont'd pending Appeal
Interpreter (Laura Ho Present). w.e.c.
Sentence of ONE (1) YEAR, in counts 1 & 2 to run
concurrently with each other. w.e.c.

(RM)



United States District Court

SOUTHERN DISTRICT OF NEW YORK

THE UNITED STATES OF AMERICA

vs.

SIR KUE CHIN, a/k/a
Chan Kau,

Defendant.

INDICTMENT

74 Cr.

(in violation of 21 U.S.C. 846;
812; 841 (6)(1); 841 (b)(1)(A).)

PAUL J. CURRAN

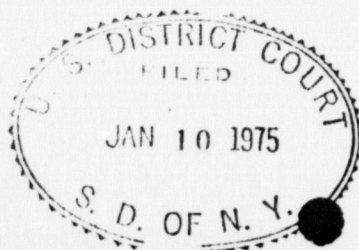
United States Attorney.

A TRUE BILL

Conrad Paul

Foreman.

FPI-SS-2-19-71-20M-6930



Jan 13, 1975 Deft present at court (then present)
Deft enters in place of not guilty plea and
to Court. 10 day firm motion. Deft. bail
fixed by May at \$2500 P.R.B. conf.

Bond by AD

MAR 24 1975 DEFT. (ATTY PRESENT) DEFT'S. ATTY WAIVES
SIX MONTH RULE - TRIAL DATE MAY 5, 1975. W.C.C.

(RW)

May 5, 1975 DEFT (ATTY, PRESENT)

JURY TRIAL BEGUN

May 6, 1975 TRIAL CONTINUED

May 7, 1975 TRIAL CONTINUED

May 8, 1975 TRIAL CONTINUED & CONCLUDED -

Jury Verdict - DEFT GUILTY IN Counts

1 and 2. P.S. I ordered Sentence

Date June 20, 1975, At 9:30 A.M. DEFT

Remanded IN LIEU OF BAIL fixed

AT \$10,000 P.R.B. SECURED BY \$2,500.

CASH OR SURETY. Bond to be signed

By DEFT. His WIFE & His Cousin. DEFT.

& His wife to Surrender Passports

(RW)

(over)

10 THE COURT: Ladies and gentlemen of the jury,
11 you are about to enter upon your final function as jurors in
12 this case, and that is to decide the facts of the case.
13 You, of course, are the sole and exclusive judges of the
14 facts. You alone pass on the weight of the evidence and
15 the credibility of the witnesses, and you alone determine the
16 reasonable inferences and conclusions to be drawn from the
17 evidence.

18 It's my duty now to instruct you as to the law,
19 and it's your duty to accept these instructions as to the law
20 and to apply them to the facts as you find them in your
21 deliberations.

22 In your determination of the facts you rely
23 solely upon your own recollection of the evidence. What I
24 may have said from time to time during the trial and what
25 I will say now in this charge and whatever counsel may have

1 JKpa
2 said during the course of the trial or in their opening
3 statements or in their summations is not evidence in the
4 case and is not to be taken by you in your determination of
5 the facts of the case.

6 You are to draw no inferences from any comments
7 made either by the Court or counsel.

8 During the course of the trial I have naturally
9 been forced to pass upon objections to the admissibility of
10 evidence, and upon motions made by counsel. You should
11 draw no inferences from either the nature of the ruling that
12 I made or anything that I may have said in the course of
13 that ruling. Such rulings relate solely to matters of law,
14 and need not concern you in your determination of the facts.

15 Neither are you to be concerned by the fact
16 that I may have asked questions of the witnesses or of the
17 nature of the questions that I asked. Any time I asked a
18 question it was only to clarify something that I thought
19 might be unclear. So don't form any inference at all from
20 the fact that I asked a question or of the nature of the
21 question asked.

22 Nothing that I have said at any time before,
23 during or after the trial should be considered by you in
24 determining your verdict except to the extent that I'm
25 instructing you now as to the applicable law and as I have

2 told you, you are required by your oath as jurors to follow
3 my instructions as to what the law is regardless of whether
4 you agree that that is what the law ought to be.

5 The evidence that you will consider consists
6 only of the testimony of the witnesses on the stand, the portions
7 of any depositions which were read into evidence, the
8 exhibits which were introduced into evidence, and the
9 stipulations of fact made by counsel. You should perform
10 your duties logically, and not emotionally. You should
11 consider both direct examination and cross examination.
12 You are permitted to draw inferences from the facts or from
13 the testimony but you are not permitted to draw inferences
14 based on other inferences.

15 Your verdict should be based upon the evidence
16 and not upon speculation or conjecture.

17 You should consider both direct evidence and
18 circumstantial evidence. Direct evidence is that given
19 by a witness who saw a thing or an event and who testified
20 as to what he saw or heard or felt, in other words, something
21 he knows of his own knowledge and which came to him through
22 his own senses.

23 Circumstantial evidence, on the other hand, is
24 evidence which tends to establish the existence of a fact
25 at issue by proof of one or more other facts which have a

2 logical tendency to lead the mind to believe that the first
3 fact at issue exists.

4 The law makes no distinction between the weight
5 to be given direct or circumstantial evidence. Both should
6 be considered by you in determining your verdict.

7 Now we have here a criminal case in which the
8 U.S. Government is in the position of making an accusation
9 or charge against the defendant. It makes this charge or
10 accusation in the form of an instrument called an indictment.
11 But the indictment is not evidence in the case. It's merely
12 a statement of what the government expects to prove in the
13 case. The government has the burden of proving the charges
14 which it makes against the defendant beyond a reasonable doubt.
15 This burden is a burden which never shifts. It was with the
16 government at the start of the trial, throughout the trial,
17 and now, and it will remain with the government as you
18 engage in your deliberations in the jury room.

19 A defendant does not have to prove his innocence.
20 He does not have to prove anything. He is entitled to remain
21 silent and the government has the burden of putting in
22 evidence of his guilt, and it must do so by means other than
23 the testimony of the defendant himself.

24 The defendant is presumed to be innocent of
25 the accusation contained in the indictment until the government

1 JKpa

2 has proved his guilt to your satisfaction beyond a reasonable
3 doubt.

4 Now, this presumption of innocence, as I told
5 you, and this privilege to remain silent, would be worthless
6 if the jury could presume from the fact that a defendant
7 elected not to take the stand that he must be guilty. So
8 you can draw no inference from the fact that in this case
9 the defendant elected not to take the stand, and
10 indeed, elected to put in only a very brief case.

11 Now, what is meant by the expression, beyond
12 a reasonable doubt? The words almost define themselves. A
13 reasonable doubt is a doubt based on reason and which arises
14 from the evidence or lack of evidence in the case. It's a
15 doubt which a reasonable person has after carefully weighing
16 all the evidence. It's a doubt that appeals to your reason,
17 to your judgment, to your common understanding and common
18 sense; such a doubt as would cause you to hesitate to act
19 in matters of importance in your daily lives. But it's not
20 caprice or whim or speculation. It's not an imagined doubt
21 or a fanciful one. It's not an excuse to avoid the performance
22 of an unpleasant duty. It should not be confused with sympathy
23 for the defendant.

24 It's not necessary for the government to
25 establish the guilt of the defendant to a positive certainty

2 or beyond all possible doubt. If that were the rule, few
3 people, however guilty they may be, would ever be convicted.
4 It's practically impossible for a person to be absolutely
5 and completely convinced of any disputed fact which by its
6 nature is not susceptible to proof to a mathematical certainty.

7 As a consequence, the law is such that in a crimina
8 case it's enough if the government proves that the defendant
9 is guilty beyond a reasonable doubt. It does not have to
10 prove the defendant guilty beyond all possible doubt or
11 to a moral certainty.

12 Now, let's look at the indictment itself. As
13 has already been noted, there are two counts in the
14 indictment. The first count is what we call a conspiracy
15 count. The second count is what we call a substantive
16 count. A substantive count is a count which charges the
17 defendant with violating himself a specific statute of the
18 criminal code; whereas a conspiracy count charges him with
19 having entered into an agreement to perform acts which, if
20 performed, would violate certain sections of the criminal
21 code.

22 Count one reads as follows: "The Grand Jury
23 charges: One: From on or about the 1st day of November 1973
24 and continuously thereafter up to and including on or about
25 the 31st day of January 1974, in the Southern District of

1 JKpa

2 New York, Sir Kue Chin, also known as Chan Kau, the defendant,
3 and others to the Grand Jury known and unknown, unlawfully,
4 intentionally and knowingly combined, conspired, confederated
5 and agreed together and with each other to violate Sections
6 812, 841-A(1) and 841-B(1)A of Title 21, United States Code."

7 Those are statutes which relate to the possession
8 and distribution of narcotic drug substances.

9 Paragraph 2: "It was a part of said conspiracy
10 that the said defendant unlawfully, intentionally and knowingly
11 would distribute and possess with intent to distribute
12 schedule one narcotic drug-controlled substances, the exact
13 amount thereof being to the Grand Jury unknown, in violation
14 of Sections 812, 841-A(1), and 841-B(1)A of Title 21,
15 United States Code."

16 Overt acts: Well, before I read that part,
17 I want to talk to you first about the nature of a conspiracy.

18 The first count of the indictment charges
19 that the defendant conspired, along with others, to violate
20 certain sections of the United States Code, controlling
21 the sale and distribution of narcotic drugs.

22 The conspiracy charge, as I had told you,
23 is entirely separate and distinct from the substantive count.
24 This fact, however, does not prevent you from considering
25 proof of actual violations as evidence that a conspiracy existed.

2 In other words, to find the defendant guilty
3 of conspiracy as charged in count one of the indictment,
4 you must find beyond a reasonable doubt, first, that sometime
5 between November 1, 1973, and January 31, 1974, an agreement
6 existed between the defendant and another person.

7 Second, that it was a part of this agreement
8 either to distribute or to possess with intent to distribute
9 schedule one narcotic drug-controlled substances.

10 In this connection you are instructed that heroin
11 hydrochloride is such a substance.

12 Third, that the defendant on trial knowingly
13 and intentionally associated himself with the conspiracy,
14 and fourth and finally, that the defendant knowingly
15 committed at least one of the overt acts set forth in the
16 indictment at or about the time and place alleged.

17 What is a conspiracy? A conspiracy is a
18 combination or agreement of two or more persons by concerted
19 action to accomplish a criminal or unlawful purpose; or some
20 purpose not itself criminal or unlawful by criminal or unlawful
21 means. The gist of the crime of conspiracy is the unlawful
22 combination or agreement to violate the law. Whether or not
23 the defendant accomplished what it's alleged that he and the
24 other alleged conspirators or conspirator conspired to do is
25 immaterial to the question of guilt or innocence. In other words,

the conspiracy doesn't have to succeed in order to prove that there was a conspiracy.

A conspiracy which is sometimes referred to as a partnership in crime because it involves collective or organized action, presents a greater potential threat to the public interest than the illicit activity of a single individual. Also, group or organized activity may render detection more difficult than activity by a lone wrongdoer.

For these and other reasons Congress has made conspiracy to violate a federal law a crime entirely separate and distinct and different from the violation of the law or laws whose violation is the object of the conspiracy.

Thus Congress has enacted special laws which provide that any person who conspires to violate the Drug Abuse Prevention and Control Act, the law which is the subject of the substantive count, is guilty of a separate crime, apart from the violation of the law itself.

To establish a conspiracy, the government is not required to show that two or more persons sat around a table or otherwise entered into a solemn contract, orally or in writing, stating that they have formed a conspiracy to violate the law, or setting forth details of the plans or the means by which the project is to be carried out, or the part to be played by each conspirator. Indeed, it would be

quite extraordinary if there were such a formal document or even a specific oral agreement. Your common sense will tell you that when men and women undertake to enter into a criminal conspiracy they leave much to unexpressed understanding. Conspirators do not usually reduce their agreements to writing or acknowledge them before a notary public, nor publicly broadcast their plans. From its very nature, a conspiracy is almost always characterized by secrecy and by deceit, rendering detection difficult.

Thus it's sufficient if two or more persons, in any manner, through any contrivance, impliedly or tacitly, come to a common understanding to violate the law. Express language or specific words are not required to indicate the assent of the parties or their attachment to the conspiracy. On the other hand, proof concerning the accomplishment of the objectives of the conspiracy may be the most persuasive evidence of the existence of the conspiracy itself.

In determining whether there has been an unlawful agreement, you may therefore look at the acts and conduct of the persons alleged to be members of the conspiracy, which are done to carry out an apparent criminal purpose. The old adage, actions speak louder than words, is applicable here.

Usually the only evidence of the conspiracy

2 which is available is that of disconnected acts on the part
3 of the defendant and his co-conspirators which acts, however,
4 when considered together and also considered in the light of
5 the inferences flowing therefrom show the conspiracy or the
6 agreement to achieve a particular result, just as conclusively
7 as more direct evidence of the agreement.

8 If upon consideration of all the evidence,
9 direct and circumstantial, you find beyond a reasonable doubt
10 that the minds of the alleged conspirators met in an under-
11 standing and that they agreed to work together in furtherance
12 of an unlawful scheme, the particular unlawful scheme alleged
13 in count one of the indictment, then proof of the existence
14 of the conspiracy is complete.

15 Now, I caution you again, in order to prove a
16 conspiracy it's not necessary to prove the success of the
17 conspiracy. The conspiracy is an agreement to violate the
18 law, and it may exist even though the final objectives of
19 the conspiracy were never accomplished.

20 Now, you may recall that I told you that one
21 requirement of proving a conspiracy is that the defendant
22 participated in the conspiracy or associated himself with it.

23 So once you have been satisfied that a
24 conspiracy existed you must ask yourself, who were its
25 members? In deciding whether this defendant was a member of the

1 conspiracy, you should consider whether on the basis of
2 all the evidence, the government has established beyond a
3 reasonable doubt that the defendant knowingly and purposely
4 entered into the conspiracy.
5

6 In making that determination you must
7 determine not only whether he participated in it, but whether
8 he did so with a knowledge of its unlawful purpose, that
9 is, did he join the conspiracy with awareness of at least
10 some of the basic aims and purposes of the conspiracy?
11 Knowledge is a matter of inference from the facts that are
12 proved.

13 In other words, you can rarely look into a
14 man's mind and find out what he's thinking. You have to judge
15 what he's thinking many times by his actions and by all of
16 the other surrounding facts.

17 It's not necessary that a defendant be fully
18 informed as to all the details of the scope of the conspiracy
19 in order to justify an inference of knowledge on his part.

20 To have guilty knowledge a defendant need not
21 know the full extent of the conspiracy and all of its
22 activities or even all of the members of the conspiracy.
23 However, I want to caution you that mere association with
24 one or more co-conspirators does not make one a member of
25 the conspiracy, nor is mere knowledge without participation

sufficient. What is necessary is that a defendant participate with knowledge of at least some of the purposes of the conspiracy and with an intent to aid in the accomplishment of those unlawful ends.

Finally, once you have found the conspiracy to exist and further find that the defendant knowingly participated in it, you need not consider the extent of his participation, because the extent of his participation has no bearing on his guilt or innocence. The guilt of a conspirator is not measured either by the extent of his participation or by the duration of his participation. Even if he participated in the conspiracy to a degree more limited than that of the co-conspirators, he is equally culpable, so long as he was in fact a member of the conspiracy in the sense that I have defined it.

You must realize, moreover, that it's not sufficient for you to find that the defendant conspired with anyone here who was either a government agent or a government informant. That is, it won't suffice for you to find that the defendant conspired with Mr. Soo or with Mr. Tse. These people were working either for the government or in cooperation with the government at that time. So you can't find a conspiracy based upon any agreement which the defendant made with them.

1 JKpa
2 You must find that he entered into a conspiracy
3 with some other person, for example, Mr. Lim.

4 When several people enter into conspiracy to
5 accomplish an unlawful end, they become agents for one
6 another in carrying out the conspiracy. Hence, the acts or
7 declarations of any one of the conspirators in the course of
8 carrying out the conspiracy and in furtherance of its common
9 purpose are deemed to be the acts of all the other co-conspirators
10 so each co-conspirator is responsible for all such acts.

11 Accordingly, if you find in accordance with the
12 instructions I have given you that the alleged conspiracy
13 existed and that the defendant was a participant in it,
14 then all acts done and statements made in furtherance of
15 the conspiracy by any other member may be considered to be
16 the act or statement of the defendant, even though such
17 acts or statements were made in his absence and without
18 his knowledge at the time.

19 However, this principle applies only to the
20 acts and declarations done or made during the continuance
21 of the conspiracy and in furtherance of its unlawful
22 objectives.

23 As I have already mentioned, the fourth
24 essential element of the crime of conspiracy is that an
25 overt act to effect the object of the conspiracy must have

1
2 been committed by at least one of the co-conspirators. An
3 overt act is any step, action or conduct which is taken to
4 achieve or further the objective of the conspiracy. The
5 overt act need not be the very crime which is the object of
6 the conspiracy, indeed, it need not be a criminal act at
7 all. Thus, in this case, only some of the overtacts listed
8 in the indictment, which I'm about to read you, are in and
9 of themselves criminal or illegal.

10 Now, there are four overt acts charged here.
11 I will read them:

12 "In pursuance of the said conspiracy and to
13 effect the objects thereof, the following overt acts were
14 committed in the Southern District of New York: One: On
15 or about November 4, 1973, the defendant Sir Kue Chin, also
16 known as Chan Kau, went to the vicinity of Eng Yuet Fa --"
17 that is spelled E-n-g Y-u-e-t F-a, "-- Eng Yuet Fa
18 Coffee Shop on Mott Street in New York City.

19 "Two: On or about November 21, 1973, the
20 defendant Sir Kue Chin, also known as Chan Kau, had a
21 conversation with Stephen Tse at Shavey Lee's Restaurant,
22 22 Mulberry Street, New York City.

23 "Three: On or about November 26, 1973, the
24 defendant Sir Kue Chin, also known as Chan Kau, had a
25 conversation with Stephen Tse at Shavey Lee's Restaurant,

32 Mulberry Street, New York City.

"Four: On or about December 12, 1973, the defendant Sir Kue Chin, also known as Chan Kau, went to the vicinity of Hong Gung Restaurant, 30 Pell Street, New York City."

Obviously, for people to meet, to have conversations, and so forth, is not in and of itself criminal conduct. But if you find, as the government charges, that the purpose of these acts was to effect drug transactions, then those meetings may shed their innocent character and become overt acts to further the purpose of the illegal enterprise.

It's not necessary for the government to prove that each member of the conspiracy committed or participated in the particular overt act since as I told you before, the act of any one member of the conspiracy done in furtherance of its purposes becomes the act of all the other members.

Also, the government is not required to prove all four of the overt acts alleged. It's sufficient if it proves the commission of at least one of the acts alleged at or about the time alleged.

Now, I referred to a number of statutes. I'm going to read you a part of just one of these, which is Section 641 of Title 21 of the United States Code. That

2 section reads in pertinent part:

3 "It shall be illegal for any person, knowingly
4 or intentionally, to distribute or to possess with intent
5 to distribute a controlled substance."

6 Now, that statute is applicable to count two
7 of the indictment, the substantive count. I will read count
8 two to you.

9 "The Grand Jury further charges: On or
10 about the 4th day of November 1973, in the Southern
11 District of New York, Sir Kue Chin, also known as Chan Kau,
12 the defendant, unlawfully, willfully and knowingly did
13 distribute and possess with intent to distribute a schedule
14 one narcotic drug-controlled substance, to wit, approximately
15 .04 grams of heroin, 39.7 percent pure."

16 Then there are several sections of the United
17 States Code cited, including Section 841 of Title 21 which
18 I have just read you in part.

19 Before you can find the defendant guilty of
20 the substantive crime as charged in count two, you must be
21 convinced that the government has established beyond a
22 reasonable doubt, first, that on or about the date charged
23 in count two, that is November 4, 1973, the defendant
24 distributed or possessed with intent to distribute a narcotic
25 drug-controlled substance.

Second, that he did so unlawfully, willfully and knowingly; and third, that the substance in the government's exhibit -- I believe it's Exhibit 2, is it not?

MR. AMOROSA: Yes, sir.

THE COURT: -- is in fact a narcotic drug-controlled substance.

Now, the first fact which I listed there, which you must find beyond a reasonable doubt in order to convict the defendant, is that he distributed or possessed with intent to distribute a narcotic drug-controlled substance. First I'd like to focus on the meaning of the term distribute and the term possess with intent to distribute as they're used in the statutes.

The term distribute means the actual, constructive or attempted transfer of a controlled substance. A transfer in this context could be the sale of a controlled substance for money or an exchange for something other than money. The money need not change hands at that time. A transfer of possession of a sample quantity could constitute distribution within the intent of the statute.

The phrase, "Possess with intent to distribute", is stated in the alternative. In other words, you must find beyond a reasonable doubt that the defendant either distributed or possessed with intent to distribute a narcotic drug-controlled

substance. The word possess has its common everyday meaning, that is, to have something within one's control, either physically or constructively. Physical custody, of course, meets this requirement.

In addition, one who does not have actual physical custody is said to possess constructively, that is to have constructive possession if he exercises dominion or control over it. Such control may be determined either by the existence of a working relationship between the person having such control and the person with actual physical custody, or by the ability of such person to dictate the movement of the object.

The word intent as used in the statute refers to a person's state of mind, his mental purpose or objective. So the expression, possess with intent to distribute, can be fairly stated to mean to control an object with the purpose or objective of transferring it.

The second element which I mentioned which you must find beyond a reasonable doubt is that the act in question was done knowingly and willfully. An act is done knowingly if it's done consciously and awarefully and not inadvertently. An act is done willfully if it's done voluntarily and deliberately and not through mistake or negligence.

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2 However, this does not mean that the defendant
3 in addition to knowing what he was doing had to know that
4 he was breaking the law. It's only necessary that he
5 perform an act knowingly and willfully and that that act
6 is in violation of the law, whether he knew it or not.

7 The third element which I mentioned which you
8 must find beyond a reasonable doubt is you must find that the
9 defendant either possessed with intent to distribute or actually
10 distributed a narcotic drug-controlled substance and the indict-
11 ment specifically refers to heroin. The evidence related to
12 heroin hydrochloride. Those terms are frequently used
13 interchangeably. I instruct you as a matter of law that
14 heroin hydrochloride and heroin, whichever it's called, is
15 a narcotic drug-controlled substance. However, you still
16 must find beyond a reasonable doubt that the material in
17 Government's Exhibit 2 is heroin hydrochloride. In this
18 connection you recall there was a stipulation that was
19 entered into between the parties and which was introduced in
20 evidence, I believe it's Government's Exhibit 4.

21 MR. AMOROSA: Yes, sir.

22 THE COURT: Which relates to the test
23 conducted on the material in Government's Exhibit 2.

24 Now, so much for the specific offenses that
25 are charged and the various elements which go to make up each of

1 those offenses which the government must prove beyond a
2 reasonable doubt.

3
4 I want to make some general comments now about
5 inferences that might be drawn by you in connection with the
6 evidence.

7 You may recall that there was some discussion
8 in the course of the trial about the failure of one side or
9 the other to call a witness who may or may not have been
10 available. There is no presumption against the government
11 for its failure to call a witness where it appears to you
12 that his testimony would have been merely cumulative or
13 repetitious and of no greater value to the prosecution than
14 that of the witnesses who have already testified.

15 And as I have already told you, no inference
16 can be drawn from the election of the defendant not to
17 testify. There has been testimony by one witness who
18 was in the role of an informer, Mr. Soo, the first witness
19 for the government.

20 The government, in narcotics and other types
21 of criminal cases, often uses, in addition to its own
22 government agents, persons known as informers, who are not
23 in the regular employ of the government but who only cooperate
24 with the government either on one occasion or from time to
25 time. There are certain types of crime where without the use

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of informants detection would be extremely difficult. Frequently it's necessary to get leads for introduction to persons allegedly engaged in illegal activities or otherwise to use informants to aid enforcement officers in one way or another. The law permits the use of informers provided the rights of the defendant are not violated. So whether you approve personally the use of informers, you should not consider that matter in your deliberations.

Now, the particular informant here was a man who admittedly entered this country illegally, that is, without proper immigration procedures. There has been evidence that at one time he was directed to leave the country on short notice, and that he is still under some apprehension of being deported. This is a factor which you may take into consideration in weighing his testimony and evaluating it. You should consider that testimony, however, in the light of all the other testimony, and you should consider the extent to which the testimony of Mr. Soo was corroborated by the testimony of others and by other evidence in the case. That is just one factor, that is, his immigration status is one factor which you may take into consideration in determining his credibility as a witness in the case.

Counsel have already told you how important your

function is in the case and I'm sure you all appreciate that fact. I know that you will conscientiously try to determine the fact issues as fairly and as objectively as you can.

You must not let your emotions get in the way of deciding this case on the basis of the evidence. Do not let sympathy for the defendant or your abhorrence of the type of crime with which he's charged here affect your verdict one way or the other. You must weigh the evidence objectively and dispassionately and determine whether the government has proved each of the elements of the charge as I have defined them to you beyond a reasonable doubt.

Now, with respect to the matter of credibility, in determining the credibility of each witness, you should consider their demeanor on the stand, that is how they behaved as they testified, whether they were frank and forthright, or whether they were evasive, whether they had a personal stake or interest in the case; in other words, whether they had any motive to falsify; whether they were in a position to have personal knowledge of the matters which were the subject of their testimony, how good their recollection of the facts in question seemed to be. In other words, in determining how much weight to give the testimony of a particular witness, or how credible he is, you should use your common sense. You should, to use a

2 colloquial expression, size up the witness, determine what
3 kind of person he is, and whether he seems worthy of your
4 trust and belief.

5 If you find that a witness willfully testified
6 falsely as to any material fact, you have the option either
7 to disregard all of his testimony or to disregard only the
8 one statement that you found to be false, or to disregard
9 such of his testimony as you see fit and to give the rest
10 of it such weight as you see fit.

11 Each juror is entitled to his or her own
12 opinion, but the purpose of your jury deliberation is to
13 exchange points of view, to listen objectively to the
14 arguments of your fellow jurors, and to present your own
15 individual views and to attempt, if possible, to reach a
16 single verdict which represents the conscientious viewpoint
17 of each and every one of you. The jury verdict must be
18 unanimous.

19 The purpose of your deliberation is to try to
20 reach a unanimous verdict if you can.

21 You should keep an open mind. Do not hesitate
22 to change a point of view merely because you expressed it
23 earlier in the jury deliberations.

24 On the other hand, you should not yield from
25 a point of view which you sincerely hold merely because you are

1 outnumbered or outweighed. But you should feel free to
2 change your mind if you are persuaded, after hearing the
3 arguments of your fellow jurors, that you are now convinced
4 that your original position was incorrect.
5

6 As you have already been told, if you can't
7 recall the testimony on any point, you may ask to have it
8 reread. Just send a note out to me through the marshal who
9 will be posted at the door of the jury room.

10 Likewise, if you want to have any of the exhibits
11 in the jury room for your use, if you will send out a note,
12 we'll send the exhibit in to you.

13 Or if you can't remember the charge or want
14 any part of it explained to you, if you will send out a note
15 to me I'll be glad to amplify or to explain it if I can.

16 I want to tell you, since it's now quarter of
17 five, that you need not feel under any great time pressure.
18 I will not keep you here late tonight. If by a quarter of
19 seven you have not reached a verdict, I will call you
20 back in and release you at that time so that you can get
21 your wraps and get to the subway by 7:00, and you won't be
22 going home late and be worried about your safety, nor need
23 you worry about getting a meal somewhere else. And we'll
24 reconvene in the morning at 10:00 for you to resume your
25 deliberations.

1 If, of course, you do reach a verdict before
2 that time, fine. But if not, don't feel under any time
3 pressure to do so or under any fear that you will be kept
4 late tonight.
5

6 I will see counsel at the side bar, please.

7 (At the side bar.)

8 MR. AMOROSA: Judge, my only problem was with
9 regard to Mong Wong and the charge respecting witnesses
10 being equally available to both sides. I know your Honor
11 gave a charge on cumulative testimony, but Mong Wong is
12 somewhat of a different situation. I thought just to direct
13 the jury's attention about Mong Wong, state he was equally
14 available to both sides, and say no presumption should be
15 drawn against either the government or the defense for its
16 failure to call Mong Wong to the witness stand.

17 MR. THAU: As a matter of fact, I had one
18 concerning Mong Wong also. My reading of it, of the way your
19 Honor gave the charge was that the jury might infer that such
20 evidence as Mong Wong would have offered would have been
21 cumulative of what the other witnesses said. That would be
22 devastating to me. I'm sure your Honor referred to the
23 other cops in the case, not to Mong Wong.

24 THE COURT: I didn't refer to anybody in
25 particular.

1 MR. THAU: Okay. Well, in any event now
2
3 you can see my problem.

4 MR. AMOROSA: You are in agreement with me then?

5 MR. THAU: For a different reason, obviously.

6 MR. AMOROSA: Right.

7 MR. THAU: The suggestion that Mong Wong's
8 testimony might be cumulative if anything else is very
9 dangerous to my client.

10 THE COURT: I haven't mentioned him specifically.
11 I take it you do not want me to.

12 MR. THAU: He's the only person about whom
13 they could possibly think as an uncalled witness --

14 MR. AMOROSA: You want a request of charge as
15 to Mong Wong, equally available charge?

16 MR. THAU: But I would ask the Court to tell
17 them that there is no suggestion in this case that had Mong
18 Wong been called his testimony would have been cumulative
19 and there should be no inference as to what it might have
20 been. I think that is fair to both of us.

21 THE COURT: All right.

22 MR. AMOROSA: As long as he's equally available
23 to both parties.

24 THE COURT: All right.

25 MR. THAU: Since the word cumulative was used,

2 I would like to make it plain, that they're not to infer
3 that it might have been cumulative. Do you want to take
4 that matter up or --

5 THE COURT: Anything else?

6 MR. THAU: Yes. That was my principal one.
7 Yes. Your Honor said that the defense elected to put a very
8 brief case. In fact, our cross examination was a lengthy
9 case. There is inherent in that type of statement --

10 THE COURT: I think they realize your cross
11 examination was in the government's case.

12 MR. AMOROSA: I disagree; you had no case at
13 all in fact. You didn't put a case on.

14 MR. THAU: That is, technically between lawyers
15 it's called that, but to a jury, they didn't put anything on.

16 THE COURT: All right, I will say something to
17 that effect.

18 MR. THAU: Thank you.

19 (In open court.)

20 THE COURT: I want to clarify the charge in
21 two respects:

22 Number one: I referred to the fact that the
23 defendant put in only a brief case. By that I referred only
24 to the what is technically called the defendant's case. You
25 may recall that Mr. Thau, representing the defendant, cross

1 examined the government witnesses at length, and anything
2 that he developed in the course of that cross examination,
3 of course, redounds to the benefit of the defendant, and
4 in that broad sense might be considered part of the
5 defendant's case. So by using the term "brief case" when
6 referring to the defendant's case, I don't mean to exclude
7 from your consideration all of the cross examination of
8 Mr. Thau of the government's witnesses.

10 The other item concerns the portion of the
11 charge that relates to the failure to call other witnesses.
12 I told you that you should not assume that, or what I said
13 was that there was no obligation to call other witnesses
14 whose testimony would be merely cumulative, and which would
15 add nothing in effect to the testimony of the witnesses who
16 did testify.

17 Now, I want to clarify that instruction insofar
18 as in your minds you might have associated it with Mong Wong.
19 You may recall that it was brought out that Mong Wong is
20 serving a term of four years imprisonment in Lewisburg Penitentiary
21 in Pennsylvania. Mong Wong is a witness who could have been
22 called by either side. Neither side decided to call him.
23 He was equally available to both sides. Therefore you should
24 not form any inference at all from the fact that he was not
25 called, nor should you form any inference as to what he might have

said if he had been called. Just forget Mong Wong insofar as the failure to call him or as to what testimony he might have given if called.

Anything further?

MR. THAU: No, thank you, your Honor.

MR. AMOROSA: No. Thank you.

THE COURT: All right, you may retire for your deliberations now. If I don't hear from you in the meantime, I will see you at a quarter of seven.

(The marshal was duly sworn.)

THE COURT: We can excuse the two alternate jurors, Mrs. Prince and Mrs. Finkel. Thank you very much for your patience and attention. You realize that you are very important because if any of the other jurors had had to be excused one of you would have had to step in to take his or her place so we wouldn't have to try the case over again from the beginning. Go back to Room 109, if you will, please.

(Alternate jurors excused.)

THE COURT: All right, the jury may retire.

(Jury retired at 4:50 P.M.)

(Discussion off the record.)

THE COURT: At the suggestion of Mr. Thau, the government has agreed that Government's Exhibit 7, which

is the English translation of the understandable portions of the tape recordings can be modified by placing at the top an identification of speaker A as Mr. Soo Yuen.

MR. AMOROSA: All right. A equals Soo Yuen.

(Government's Exhibits 1, 2, 3, 4, 5, 6, 5-A, 6-A, 8 and 9 received in evidence.)

(Recess.)

(Note received from jury at 5:17 P.M.)

(In open court, 5:45 P.M., jury not present.)

THE COURT: Before we bring the jury out, I will tell you that we have received a note from the jury which has been marked Court's Exhibit 1 and which reads:

"One: Indictment. What is it? Relation to heroin?"

"Two: Which meeting was Mong Wong present?"

"Three: Transcripts."

Now, I take it that item one concerning the indictment and what it is in relation to heroin, they want me to read any part of the indictment that refers to heroin or to a narcotic drug by any other name, and I will simply re-read references in the indictment to either heroin or narcotic drugs, if that is what they want.

MR. THAU: Your Honor, possibly ask them whether

they might want to have a copy of the indictment.

THE COURT: Well, I won't suggest that to them, but I will indicate that they can have it if they want it.

"Second: Which meeting was Mong Wong present?"

I suppose we'll have to have the reporter try to find that point in the transcript. Do you remember in whose testimony that was?

MR. THAU: In Soo Yuen's.

MR. AMOROSA: It was in Soo Yuen's, in the testimony of three people, it was in Soo Yuen's testimony, it was in Fenrich's testimony and it was in Toal's testimony. Maybe they're just referring there to a date.

THE COURT: If you can agree, --

MR. THAU: Yes.

THE COURT: Maybe we won't have to refer to the record.

MR. THAU: Sure. It was December 20th.

MR. AMOROSA: Yes.

MR. THAU: Your Honor, I would ask that the jury not be told Mong Wong was at the December 20th meeting but that there is evidence that Mong Wong was at a December 20th meeting. To put it the other way would suggest that the Court tells them that he was at such a meeting.

THE COURT: Well, can I say there was testimony

of three witnesses that he was there at that meeting.

MR. THAU: I don't know whether the testimony of the other witnesses justify characterizing their testimony as saying that the man had been there at a meeting.

MR. AMOROSA: Soo said that Mong Wong was present at the meeting, the meeting consisting of Soo, the defendant, and Mong Wong.

MR. THAU: That is conceded.

MR. AMOROSA: Fenrich said he walked into the coffee shop, saw the defendant, and Soo and another man whom he did not know. Toal said he saw the defendant and Soo going into the coffee shop, and then he saw Mong Wong, whom he knew, go into the coffee shop. But didn't see him sit down at a meeting.

MR. THAU: I would say there is testimony then to that.

THE COURT: There is testimony that he was present at a meeting on December 20th. All right. Now transcripts, I assume he refers to the transcript of the tapes.

MR. THAU: I assume so. Your Honor, I would ask, since one goes together with the other, that if the transcript goes in, so too does the stipulation, Exhibit number 9, which is the stipulation concerning what Mrs. Noy

would have testified to.

THE COURT: Is that acceptable?

MR. AMOROSA: No, it isn't.

MR. TIAU: It's explanatory.

MR. AMOROSA: They're not asking for that.

MR. TIAU: They don't know enough to ask for it probably. That is explanatory of what the transcript is.

THE COURT: I can ask them if they want the stipulation; very good. Thank you.

MR. AMOROSA: All right.

THE COURT: Bring them in, please.

(Jury present at 5:30 P.M.)

THE COURT: For the record, courtroom deputy clerk has been handed a series of notes asking him to make phone calls to the homes of the jurors. In that connection, I might say to Mrs. Tatenbaum that the clerk has been trying to reach your home and there is no answer yet. But he'll keep trying. And he'll make your other calls if he can find anybody at the other end.

I have your note. There are three items referred to in it. The first reads: "Indictment, what is it in relation to heroin?"

Now, am I correct in understanding that you want me to tell you what the indictment says with respect to

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2 heroin, or however it's referred to in the indictment? Is
3 that what you want?

4 JUROR 10.12: Does the indictment specifically
5 refer to heroin alone or to narcotics in general?

6 THE COURT: All right. Here's what the indictment
7 says in that respect: Count one, which is the conspiracy
8 count, has two main paragraphs. The first paragraph merely
9 alleges that there was a conspiracy between the defendant
10 and others unknown to violate the drug laws without referring
11 to any specific drugs. In other words, the laws there are
12 merely referred to as Sections 612 and so on of Title 21.
13 No reference to drugs either by the generic term or by a
14 specific term such as heroin.

15 Paragraph 2 says that it was part of said
16 conspiracy that the defendant unlawfully, intentionally
17 and knowingly would distribute and possess with intent to
18 distribute schedule one narcotic drug-controlled substances,
19 the exact amount thereof being unknown.

20 Now, schedule one is a part of one of the
21 statutes that is referred to, and in schedule one heroin is
22 listed. But in this paragraph of the indictment it's only
23 referred to as a narcotic drug-controlled substance
24 which is included in schedule one.

25 Now, the overtacts which are alleged, which are

2 also part of the conspiracy count, do not refer to drugs
3 at all. They refer to certain meetings and conversations
4 that took place at various times and places.

5 Count two, the substantive count, reads:

6 "On or about the 4th day of November 1973, in the Southern
7 District of New York, Sir Kue Chin, also known as Chan Kau,
8 the defendant, unlawfully, willfully and knowingly did
9 distribute and possess with intent to distribute a schedule
10 one narcotic drug-controlled substance, to wit, approximately
11 .04 grams of heroin, 38.7 percent pure." So count one refers
12 to a narcotic drug-controlled substance as listed in
13 schedule one, and count two also refers to a schedule one
14 narcotic drug-controlled substance but adds the specification,
15 .04 grams of heroin, 38.7 percent pure.

16 Now, does that answer what you had, or the
17 question you had about the indictment, or was there something
18 else?

19 JUROR NO. 12: I don't know who raised the
20 question, but I think that answers it. The focus of the
21 question was whether we are dealing solely and specifically
22 with heroin in the indictment, in the first part.

23 THE COURT: You are dealing in count two solely
24 and specifically with heroin. If you find that there is
25 anything in that package other than heroin you cannot convict

on count two.

Now, count one refers only to a schedule one narcotic drug-controlled substance, but the only evidence that has been introduced in the case is evidence relating to that package, and you must find that that package therefore contains a schedule one narcotic drug -- excuse me, I should not say that. We are talking about the conspiracy. I'm sorry. The conspiracy is not limited to the package. The conspiracy is the agreement to deal in drugs. But the only evidence is of an agreement to deal in heroin.

JUROR NO. 4: You had listed there were four overt acts that would lead to the conspiracy charge.

THE COURT: There are four overt acts.

JUROR NO.4: Could you explain that and read those off?

THE COURT: Yes. Those four overt acts are alleged as the overt acts necessary as elements of the conspiracy charge. In other words, you have got to show not merely an agreement to violate the law, but that some member of the conspiracy, in furtherance of the purposes of the conspiracy, performed at least one of the four overt acts, and I will read them to you.

"One: On or about November 4, 1973, the defendant Sir Kue Chin, also known as Chan Kau, went to the

vicinity of the Eng Yuet Fa Coffee Shop on Mott Street in New York City." In other words, November 4, 1973, the defendant went to the vicinity of that coffee shop on Mott Street.

"Two: On or about November 21, 1973, the defendant, Sir Kue Chin, also known as Chan Kau, had a conversation with Stephen Tse at Shavey Lee's Restaurant, 32 Mulberry Street, New York City.

"Three: On or about November 26, 1973, the defendant Sir Kue Chin, also known as Chan Kau, had a conversation with Stephen Tse at Shavey Lee's Restaurant, 32 Mulberry Street, New York City."

So two and three are two conversations with the same man, Stephen Tse, in the same location, Shavey Lee's Restaurant, on two dates, five days apart: namely November 21st and November 26th.

"Number four: On or about December 12, 1973, the defendant Sir Kue Chin, also known as Chan Kau, went to the vicinity of Hong Gung Restaurant, 30 Pell Street, New York City."

So overt acts one and four merely have the defendant going to the vicinity of certain coffee shops or restaurants; the first on Mott Street, the second on Pell Street in New York City.

The second and third have to do with conversations with Stephen Tse in Shavey Lee's Restaurant on two different dates.

Now, number two or item two in the note from the jury reads: "Which meeting was Mong Wong present?"

I've talked to counsel about that, and they have agreed that I might tell you that the testimony was to the effect that Mong Wong was present at the meeting on December 20th.

JUROR NO. 4: Is that the only meeting he was present at?

THE COURT: That was the only meeting of that type. Now I think, wasn't there a -- no, that was the only meeting at which there was testimony that he was present.

Any further question about that?

All right.

Item three on the notes reads: "Transcripts," and I assume you are referring there to the transcript of the tapes.

THE FOREMAN: Yes.

THE COURT: I have here the transcript of the tape. As you will see, it's handwritten by Mrs. Moy, and it has in the left margin A's and B's to indicate two different participants in the conversation, identified as

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2 A and B, and at the top the note has been added: "A equals
3 Mr. Soo Yuen."

4 The party B was not identified by Mrs. Moy
5 but was identified by other testimony in the case as you
6 undoubtedly will recall.

7 Now, I have here also the stipulation that
8 was entered into by the government and by the defendant
9 with respect to the transcript; if you are interested in
10 having it also. That is up to you. Do you want the
11 stipulation or do you want only the transcript?

12 THE FOREMAN: The stipulation is --

13 THE COURT: That is the agreement between the
14 parties regarding the transcript.

15 THE FOREMAN: Just the transcript.

16 THE COURT: All right.

17 THE FOREMAN: I have two more questions here.
18 Should I read them to you now?

19 THE COURT: You may ask them now or hand them
20 up to me through the clerk.

21 Thank you.

22 THE COURT: Item one of the note reads: "State-
23 ment of Stephen Tse (Agent)."

24 Now, before I read item two, that statement,
25 the entire statement was not introduced in evidence. Instead

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2 only one paragraph of it was read. I take it you want that
3 paragraph re-read? That is all we can do. We can't let
4 you have the whole statement because it isn't in evidence.

5 THE FOREMAN: No, his testimony, like what he
6 said on the stand.

7 THE COURT: You mean his entire testimony or
8 only part of it?

9 THE FOREMAN: Well, we were discussing a
10 meeting with the defendant. We wanted to know what he said
11 was said at the meeting.

12 THE COURT: All right, we'll have to let the
13 reporter see if he can find those spots. I will go on to
14 item two for the moment.

15 It reads: "When was he arrested and
16 indicted?" Are you referring to the defendant there I
17 assume?

18 THE FOREMAN: Yes.

19 THE COURT: As I understand it, he was
20 arrested in July of 1974, and indicted in January of 1975.
21 Is that correct?

22 MR. THAU: That's correct.

23 MR. AMOROSA: I believe that is correct, yes,
24 sir.

25 THE COURT: All right. So date of arrest,

July 1974. Date of indictment, January 1975.

Now, let me ask the reporter, how long do you think it will take you to find Mr. Tse's testimony about the meetings that he attended.

THE REPORTER: Quite awhile.

THE COURT: Do you want to go back and deliberate further or do you want to wait until the reporter has found those spots in his notes?

THE FOREMAN: Would you want to deliberate?

JUROR NO. 4: Why don't we deliberate.

MR. THAU: Pardon me, your Honor, may we approach the bench before the jury is sent out again on some of the answers?

THE COURT: All right.

(At the side bar.)

MR. THAU: Your Honor, concerning the conversation transcript, you said that as to conversant B, you said, "But he was identified by other testimony." Now, at no time did Soo Yuen say that he looked at this transcript and that he attributed any language attributed to somebody labeled B to the defendant. What he said was, you remember the conversation of course, it was all --

THE COURT: I thought he said he listened to it, and that he was A, and B was the other man, or did he not?

1 MR. ALOROSA: He did in fact say he listened
2 to it and he heard the voices on it.
3

4 THE COURT: He can have the reporter look and
5 see what he said, and I will correct that if the record is
6 otherwise than I indicated.

7 MR. THAU: Let me suggest something. There
8 is no testimony, in fact everything points to the contrary,
9 there is no testimony that Soo Yuen ever saw Mrs. Moy's
10 written transcript. Okay?

11 THE COURT: That's right, he listened to the
12 record, didn't he?

13 MR. THAU: He listened to the record. He
14 says in the abstract, "Of course I heard myself talk on it,
15 and I heard the defendant talk on it." But this is a very
16 important distinction.

17 THE COURT: All right, I think I might explain
18 to them that he did not testify he saw this, and so he
19 didn't say that B represented the defendant, he only said
20 that the -- he listened to the transcript, and it's a
21 conversation which he had with the defendant.

22 MR. THAU: Well, there was also Mong Wong
23 present at the time.

24 MR. ALOROSA: Mong Wong was not present at the
25 time. According to Shirley, Shirley Moy.

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2 MR. TIZU: Forget about Shirley. We are now
3 talking about Soo Yuen's recollection of the incident.

4 MR. AMOROSA : What's your point?

5 MR. THAU: If the Judge is going to say that
6 it was a one-on-one conversation, that is not representative
7 of what Soo Yuen said about that conversation. It was a
8 three-way conversation. That that might contradict Shirley
9 Moy is justtough.

10 MR. AMOROSA: I think you are working on a
11 faulty premise.

12 MR. THAU: Are you denying --

13 MR. AMOROSA: I agree that Soo never testified
14 from the witness stand that he saw this transcription, he never
15 identified B as the voice of the defendant. I think that
16 you can go that far. I think that that is the thing to
17 say at this point, that Soo never identified the voice
18 as the defendant's or did Shirley Moy on the transcript.

19 THE COURT: But he did testify that he heard
20 the transcription and it was, I mean the recording, and that
21 it was a recording of a conversation which he had with the
22 defendant and Mong Wong.

23 MR. THAU: And Mong Wong. That is fair.

24 (In open court.)

25 THE COURT: I should clarify one thing I said

1 in connection with the transcript which you asked for and
2 which I have just given you.
3

4 In referring to the participants identified
5 by the letters A and B, I indicated that it had been agreed
6 that A was Soo Yuen, the first witness who testified for
7 the government.

8 I indicated that Mrs. Moy had not identified
9 the participant referred to as B, but that there was evidence
10 that the participant B was the defendant. I should have
11 said, to be more accurate, that the witness Soo Yuen never
12 testified that he had seen that transcript. What he said
13 was that he had listened to the recording and that the
14 recording was a recording of a conversation which he had had
15 with the defendant and Mong Wong. All right? Now you
16 can return for your deliberations while the court reporter
17 is trying to find what Mr. Tse said about the meetings
18 he attended.

19 THE FOREMAN: Your Honor, I missed that.

20 THE COURT: You can go back to the jury room and
21 deliberate further if you like while the reporter is trying
22 to find the testimony of Mr. Tse about the meetings he
23 attended.

24 THE FOREMAN: Fine.

25 (Jury retired at 6:10 p.m.)

(In open court, jury present, 6:50 P.M.)

(Note previously received from jury at

5:50 P.M. marked Court's Exhibit 2.)

THE COURT: The reporter has found in his notes the portions relating to the meetings attended by Mr. Tse, but these portions are fairly extensive and it will take him a while to read them, and I had promised that I'd let you go at about this time, so you could get home before dark. I'm going to let you go now, and when you come back in the morning, first thing, we'll have the reporter read those parts of his notes to you.

So have a good evening. Don't discuss the case with anybody in the meantime, and we'll see you at 10:00 in the morning.

(The jury left the courtroom.)

(Court adjourned to May 8, 1975 at
10:00 a.m.)

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JURY
UNITED STATES OF AMERICA,
vs.
SIR HUI CHUN, a/k/a CH. HUI,
Defendant.

May 9, 1975.
10:00 a.m.

(Trial resumes.)
(Jury resumed deliberations.)
(At 10:10 a.m. the jury present in the
courtroom.)

THE COURT: Good morning.

It's good to see you all here. You always
wonder overnight, are you going to end up with 12 jurors in
the morning.

We are ready to have read now the portions of
the reporter's notes relating to the testimony of Mr. Tse
about the meetings that he attended.

(Record read.)

THE COURT: Anything further?

All right, you may go back to the jury room.

Oh, may I call you back to tell you one thing.
I forgot to tell you in my charge yesterday.

You probably assumed this and understood it
anyway, but it should be made clear: You must return a verdict

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on each of the two counts, either guilty or not guilty on each of counts one and two.

(Jury retired at 10:30 a.m. to continue their deliberations.)

(Note received at 11:26, marked Court's Exhibit 3.)

(Jury present in the courtroom at 11:40 a.m.)

THE COURT: I have a note from the jury which reads as follows: Number one has been struck out, so I won't read it.

Number two reads: "Review conditions of a conspiracy." By which I assume you mean review the elements of a conspiracy.

THE FOREMAN: Right.

THE COURT: All right.

Number three reads: "Is the intent to contact another person or persons a conspiracy?" By which I take it you mean, is mere intent to associate yourself with another person to form a conspiracy sufficient.

THE FOREMAN: Yes.

THE COURT: All right.

Well, the answer to number three, as you have just rephrased it, is no. You must actually have associated yourself with at least one other person for a criminal purpose; in other words, if you form in your own mind the idea

1 that you are going to become associated with some other
2 person for a criminal purpose and never do anything about
3 it, that is not sufficient to constitute a conspiracy.
4 That will become clear when I answer the question number 2
5 about the elements of a conspiracy.
6

7 I will re-read to you the part of my charge
8 in which I defined the four elements of a conspiracy.

9 In order to find the defendant guilty of
10 conspiracy as charged in the first count of the indictment,
11 you must find beyond a reasonable doubt, first, that
12 sometime between November 1, 1973 and January 31, 1974 an
13 agreement existed between the defendant and another person.

14 Second, that it was a part of this agreement
15 either to distribute or to possess with intent to distribute
16 schedule one narcotic drug-controlled substances.

17 And I have instructed you, as you will recall,
18 that heroin hydrochloride is such a substance.

19 Third, that the defendant knowingly and intention-
20 ally associated himself with the conspiracy.

21 And fourth, that at least one overt act, as
22 set forth in the indictment -- and you remember there were
23 four overt acts that are referred to in the indictment -- was
24 committed at or about the time and place alleged by a member
25 of the conspiracy.

First is the agreement; second is that the agreement must be to distribute or possess with intent to distribute a narcotic drug-controlled substance; third, that the defendant knowingly and intentionally associated himself with the conspiracy; and fourth is that at least one overt act was committed by a member of the conspiracy.

That is one of the four overt acts listed in the indictment.

Now, if you want me to go into those elements further, I can, but I think that is probably all you want, isn't it?

THE FOREMAN: There might be a question among the jury about the overt acts. Could you read those over again.

THE COURT: All right.

The four overt acts that are listed in count one are as follows:

One: On or about November 4, 1973, the defendant, I'm not going to give his name each time, the defendant went to the vicinity of Eng Yuet Fa Coffee Shop on Mott Street in New York City.

Two: On or about November 21, 1973, the defendant had a conversation with Stephen Tse at Shavey Lee's Restaurant, 32 Mulberry Street, New York City.

Three: On or about November 26, 1973, the defendant had a conversation with Stephen Tse at Shavey Lee's Restaurant, 32 Mulberry Street, New York City.

And four: On or about December 12, 1973, the defendant went to the vicinity of Hong Gung Restaurant, 30 Pell Street, New York City.

Summarizing then, counts one and four involve his going to certain places at certain times. Count one says that the defendant went to the vicinity of a coffee shop on Mott Street; count four says that on or about December 12, 1973 he went to the vicinity of a restaurant on Pell Street in New York City. Counts two and three relate to conversations he's alleged to have had with Stephen Tse at Shavey Lee's Restaurant; the first conversation alleged to have taken place on November 21st and the second on November 26, 1973. Now you have got to find that he did one of those four things at or about the time alleged.

JUROR NO. 4: For item number four-- could you read the original four definitions of conspiracy, the elements?

THE COURT: The elements. All right. The elements again, I will just summarize them:

First is that an agreement existed between November 1, '73 and January 31, '74.

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Second: That it was a part of the agreement to distribute or to possess with intent to distribute a narcotic drug-controlled substance.

Third: That the defendant knowingly and intentionally associated himself with the conspiracy.

And fourth: That at least one overt act, that is, one of these four overt acts was committed at or about the time alleged.

JUROR NO. 4: Now if one of the four overt acts was committed, that would lead us to agree with item number four in the definition of conspiracy, one of the four?

THE COURT: If you find any one of those four overt acts was committed by the defendant at or about the time alleged, then the fourth requirement has been satisfied.

JUROR NO. 4: And only one of those four requirements has to be satisfied in order for the decision to be guilty of the charge?

THE COURT: Only one of them would have to be found in order to find the fourth element of the conspiracy. You'd still have to find the other three elements of the conspiracy. One is the existence of the agreement; second, that it was a part of the agreement to distribute or possess with intent to distribute narcotic drugs; and third, that

2 the defendant knowingly and intentionally associated himself
3 with the conspiracy.

4 JUROR NO. 11: Do the first three elements
5 have to occur before one of the four overt acts?

6 THE COURT: Yes.

7 JUROR NO. 11: They have to occur before?

8 THE COURT: In other words --

9 MR. THAU: May we approach the bench on that,
10 your Honor?

11 MR. AMOROSA: May we approach the bench?

12 THE COURT: Yes. Well, all right, you may
13 approach the bench. There is a problem here.

14 (At the side bar.)

15 THE COURT: You see, since the four overt acts
16 are all overt acts in which the defendant is alleged to
17 have performed them, they would have to be performed after
18 the conspiracy was performed. In other words, he couldn't
19 be endorsing an overt act performed by somebody else before
20 he joined the conspiracy because they're all his overt acts.

21 MR. THAU: I think that when they say before,
22 they're not talking about before in point of the time that
23 they occurred, but as a threshold question itself so
24 that they have to find proof beyond a reasonable doubt of the
25 first three elements before they even bother considering
the overt acts, and that is so. That is the before he's

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2 talking about.

3 THE COURT: I answered yes; I said they had to
4 find the first three things before they considered the fourth.

5 MR. THAU: I think that is the way it's got
6 to be put to them.

7 THE COURT: What's your comment?

8 MR. THAU: And only if they find the first
9 three have been proven beyond a reasonable doubt need
10 they go onto the overt acts, for if any of the three --

11 THE COURT: I think what he had in mind was
12 something else. I think what he is asking is whether the
13 overt act must take place after the conspiracy is formed and
14 after the defendant has associated himself with the
15 conspiracy.

16 MR. THAU: It could mean either. But I think
17 they may be thinking of the alternate --

18 MR. AMOROSA: Judge, I'm afraid the jury is
19 confused that count one relates only to Agent Tse and the
20 defendant, and is not a general conspiracy count to
21 distribute heroin at any time during the periods mentioned.
22 I think that they believe that the government's proof with
23 regard to count one is limited to the activities of Tse and
24 Soo Yuen, and is not just a general conspiracy count.
25 Count one is not, of course, limited to the conspiracy to

1 distribute to Tse and Soo Yuen. It's a conspiracy to
2 distribute in general.
3

4 THE COURT: Well, I don't believe they are
5 so confused because two of the overt acts have nothing to
6 do with Tse at all.

7 MR. AMOROSA: That is true, but they do have to
8 do with Soo Yuen.

9 THE COURT: I will see if I can clarify. Now,
10 with respect to the time sequence, do you both agree that
11 the overt acts, since they are all alleged to be overt acts
12 of the defendant himself and not of some co-conspirator, they
13 have to have taken place after the conspiracy was formed and
14 after he associated himself with it?

15 MR. THAU: Yes, but I would also like your
16 Honor to cover the possibility--

17 MR. AMOROSA: Yes.

18 MR. THAU:--that this before, after, question
19 might have to do with whether the jury should consider the
20 overt act after. I would also ask the Court to tell them
21 that as to the overt acts, they have to find them to have
22 been committed pursuant and to forward the aims of a
23 conspiracy. That is a most important thing. Because a
24 mere finding that a guy was someplace ought not to be sufficient.
25

THE COURT: I understand.

2 MR. AMOROSA: I have no difficulty with what
3 Mr. Thau has said. I think your Honor covered it, but
4 there is no question that the overt act, at least one of the
5 overt acts must have taken place in furtherance of the
6 agreement. But the agreement didn't have to obviously take
7 place days or weeks before. It could have taken place that
8 same day, the meeting of the minds.

9 THE COURT: Or even at the same instant.

10 MR. AMOROSA: At the same instant, yes; I'd
11 like your Honor to cover that, and I would hope also your Honor
12 covers the fact that count one is a general conspiracy not
13 only related to these particular persons, that is Tse and
14 Soo Yuen.

15 MR. THAU: I think that is unnecessarily confusing.

16 THE COURT: I will try to clarify.

17 (In open court.)

18 THE COURT: The difficulty is that the question
19 is a little ambiguous in its use of the term "before".

20 And I will explain the charge a little further
21 in this way, and I think it will probably answer the
22 question, whichever way it was intended.

23 The four elements of the crime of conspiracy
24 which I have defined to you are all necessary ingredients of
25 the crime. If any one of them is missing, the crime of

1 conspiracy does not exist. So in that sense, if you find
2 that the first or the second or the third element is missing,
3 you need not consider whether or not there was an overt act
4 performed which would satisfy the fourth requirement of
5 the crime. So in that sense, you have to consider the others
6 before you need consider the existence or non-existence of
7 an overt act.
8

9 However, insofar as the time sequence is
10 concerned, the overt act need not take place any particular
11 period of time after the formation of the conspiracy. The
12 overt act can take place even simultaneously with the
13 formation of the conspiracy.

14 It's only necessary that the overt act be
15 performed to further the purposes of the conspiracy.

16 Now, in this case the four overt acts which
17 are alleged are all acts of this defendant, so you don't
18 have to consider whether the defendant is adopting or
19 has adopted overt acts performed by some other co-conspirator.
20 They are all acts which he is alleged to have performed or
21 engaged in.

22 So to summarize again, there are four elements
23 to the conspiracy: The agreement is number one. Second
24 is that it was a part of the agreement to distribute or
25 possess with intent to distribute narcotic drugs. Third,

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2 that the defendant associated himself with the conspiracy,
3 knowingly and intentionally. And fourth, that he performed
4 at least one of the four overt acts which are alleged in the
5 indictment.

6 The overt acts again are; first is going to
7 a coffee shop on Mott Street on November 4th; second and
8 third is having conversations with Stephen Tse in Shavey
9 Lee's Restaurant on November 21st and 26th; and fourth
10 is going to a restaurant on Pell Street, on December 12,
11 1973.

12 And again, you need only find one of those
13 four alleged overt acts.

14 Is there anything that isn't clear or anything
15 you want explained further?

16 JUROR NO. 12: I think you gave some explanation
17 of what acts might be deemed to have constituted a conspiracy.

18 THE COURT: Well, I don't think I did. I
19 did define a conspiracy generally as an agreement to perform
20 acts which are in violation of the law. You don't have to
21 agree to violate the law specifically. You don't even
22 have to be aware that there is a law. But you have to
23 agree to do things which in fact violate the law.

24 Now we are talking here about a general
25 conspiracy, a conspiracy to distribute or possess with intent

to his ribate narcotic drugs. At any time during this period from November 1, 1970 to January 31, 1971, if there was an agreement at any time during that period, between this defendant and any other person to distribute or possess with intent to distribute narcotic drugs which are prohibited under schedule one, and that includes heroin hydrochloride, then the allegations of count one of the indictment with respect to the existence of a conspiracy have been satisfied.

Now, you have got still to find that in addition to being a member of such a conspiracy, the defendant performed at least one of the four overt acts.

JULOR CO. 11: When you said, -- can I infer that the agreement has to occur before, there has to be an agreement before you can consider there was an overt act?

THE COURT: Well, I can't say that. That is the question pretty much you asked before. You have got to find all four elements of the conspiracy, that is the agreement that it was an agreement to distribute or possess with intent to distribute drugs, and that he voluntarily and intentionally associated himself with it, and that at least one of the four overt acts was performed.

Now, you don't have to find any particular time relationship between those various elements, if you find that they all four exist. You need to find only one of the

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our overt acts, and it need not have any particular time relationship to the other elements of the conspiracy.

THE FOREMAN: The connection with defendant or any one trying to conspire to distribute, would that eliminate the agents? The agents cannot be --

THE COURT: The agents cannot be co-conspirators. You must find that he conspired with some other person.

THE FOREMAN: Right.

THE COURT: Now, the evidence, I believe, is relied upon by the government to show a conspiracy between this defendant and Mr. Lim; in other words, as you may recall, there was testimony by Soo Yuen and by Stephen Pse that the defendant referred to his man or a man who was going to get narcotic drugs, presumably heroin. You will have to evaluate that testimony. You will have to determine whether it's credible and you will have to determine whether that is sufficient evidence of the elements of a conspiracy, that is, whether or not you believe that there was an agreement between this defendant and some man, for example, Mr. Lim, by which they were going to distribute or possess with intent to distribute narcotic drugs.

MR. TIAU: May we approach, your Honor?

THE COURT: You may.

(At the side bar.)

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2 MR. THAU: Your Honor, the government having
3 elected to drop Hong Wong as a co-conspirator I think that
4 it's not Mr. Lim or anyone else with whom they have to find
5 there was an agreement by the defendant, but it has to be
6 Mr. Lim and no one else.

7 THE COURT: No.

8 MR. AMOROSA: That is inaccurate.

9 THE COURT: No, no, no, the indictment does not
10 name Mr. Lim. They named persons unknown, and they don't
11 have to find specifically it was Mr. Lim who was the man
12 referred to. They need only find that there was a man
13 with whom he had an agreement to distribute drugs.

14 MR. THAU: Okay.

15 MR. AMOROSA: Yes, sir.

16 MR. THAU: Your Honor said that both Soo and
17 Tse testified that the defendant spoke to him about
18 someone with whom he was dealing in narcotics. Again,
19 there was no such direct testimony or I should say that
20 cross examination finally made it plain that there was no
21 narcotic mentioned, that it was their understanding that
22 narcotics was involved. There is no direct evidence of that.

23 THE COURT: Well, I will clarify that. I think
24 it's clear now but I will clarify it further.

25 MR. AMOROSA: I have nothing further. I would

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2 just hope, Judge --

3 MR. THAU: I'm sorry, also could the defendant
4 not have conspired with the agent, but not could Soo Yuen.

5 THE COURT: I understand. I have already said
6 that but I will say it again.

7 (In open court.)

8 THE COURT: To answer the question further
9 about whether there can be a conspiracy between the defendant
10 and an agent, I should remind you that in the course of my
11 main charge I told you that there cannot be a conspiracy
12 between this defendant and an agent or between this defendant
13 and an informant. It has to be between this defendant
14 and some other person than an agent or informant or other
15 person who's acting on behalf of the government.

16 Now, I referred a moment ago to the
17 testimony that this defendant had had conversations about a
18 man or his man who was going to furnish narcotic drugs. I
19 remind you again, of course, that on cross examination it
20 was brought out that drugs were not referred to by name.
21 Instead other words such as the Chinese equivalent of stuff
22 were used. It was the impression of the witnesses that
23 both sides to the conversation understood they were talking
24 about narcotic drugs. It will be your job to determine whether
25 they in fact were talking about narcotic drugs, in other words,

whether the defendant understood that a narcotic drug-controlled substance, specifically heroin, was to be traded.

Anything further?

THE FOREMAN: Could we have the second charge read, sir?

THE COURT: The second count of the indictment, the substantive count?

THE FOREMAN: Yes, sir.

THE COURT: Yes. This is count two: "The Grand Jury further charges on or about the 4th day of November 1973, in the Southern District of New York, Sir Kue Chin, also known as Chan Kau, the defendant, unlawfully, willfully, and knowingly did distribute and possess with intent to distribute a schedule one narcotic drug-controlled substance, to wit, approximately .04 grams of heroin, 38.7 percent pure."

In other words, the substantive count charges the performance of the illegal act which was alleged to be the purpose of the conspiracy charged in count one.

MR. AMOROSA: Your Honor, may we approach the bench?

THE COURT: I want to say of course that count one is not as specific as count two. Count one is a general count, and charges generally a conspiracy to possess with

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intent to distribute, or to distribute a narcotic drug-
controlled substance without specifically referring to heroin
in any amount or period.

MR. AMOROSA: Thank you, sir.

THE COURT: All right.

Thank you.

(Jury retired at 12:05 p.m.)

(Note received at 2:50 p.m., marked

*** Court's Exhibit 4.)

(Note received at 3:25 p.m., marked

*** Court's Exhibit 5.)

(Jury present at 3:30 p.m.)

THE COURT: I have two notes from the jury;
the first one, which was received a little while ago,
reads as follows: "Soo's testimony of what,--" it says, "he
's'," I think it means, "he said to the defendant on November
3rd and November 4th." Is that correct?

All right. Now the reporter has found in his
notes that part of Soo's testimony and he'll read it in a
moment.

In the meantime I will read the note which was
just received this moment which has been marked Court's
Exhibit 5 and which reads, "We would like to hear Fenrich's
testimony of what he saw on December 20th."

Well, I think the reporter can probably find that pretty quickly, so he can proceed first to read Soa's testimony about what he stated to the defendant on November 3rd and November 4th.

(Record read.)

THE COURT: Anything further?

JUROR NO. 4: Toal's --

THE COURT: Toal's testimony about what?

JUROR NO. 4: About the December 20th meeting.

THE COURT: About the December 20th meeting.

All right. Can you find that?

(Pause.)

(Record read.)

MR. THAU: Your Honor, may we approach the bench for a second?

THE COURT: All right.

(At the side bar.)

MR. THAU: Is that all they wanted, because there was some cross examination on that fronting phrase.

MR. AMOROSA: They said that's all they wanted.

THE COURT: If you want the reporter to look further?

MR. THAU: No, I'm not going to force them.

(The jury retired at 4:00 p.m. to deliberate.)

J O H N T O A L, called as a witness, having been duly sworn by the Foreman of the Grand Jury, testified as follows:

BY MR. HOSKINS:

Q Would you state your name?

A John Toal, T-o-a-l.

Q And where are you employed?

A Special Agent with the Federal Drug Enforcement Administration.

Q Special Agent Toal, in the course of your official duties with the Drug Enforcement Administration, have you had occasion to take part in the investigation of a man named Sir Kue Chin, a man also known as Chan Kau?

Have you had occasion to know of that person?

A Yes, I have.

Q And directing your attention to November and December of 1973, did you have occasion, in the course of your official duties, to be involved in an investigation of a possible conspiracy by Mr. Chin to sell a quantity or quantities of heroine to an undercover agent of the DEA?

A Yes, I did.

Q And, also, involved in that investigation, was there not, was an undercover special agent whose name is Steve Tse who has been transferred to the DEA in Seattle?

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2 A Stationed in Seattle.

3 Q Also, an undercover informant located in the
4 southern United States?

5 A That is correct.

6 MR. HOSKINS: At this point, I want to say
7 for the record and the Grand Jury that most of
8 Special Agent Toal's testimony will be hearsay
9 testimony, that is, it is testimony as to what
10 Special Agent Tse did and what the undercover
11 informant did.

12 And he is testifying not from his personal
13 knowledge, but his secondhand knowledge passed
14 on from conversations with these two persons as
15 well as official reports which they filled out
16 and filed.

17 You have a right, if you think it is
18 necessary, to hear the testimony both Special
19 Agent Tse and the undercover informant. If you
20 inform me that you would like to hear from them,
21 then the Government will have them produced before
22 you to vote on the indictment.

23 *11/13*
24 Q On November 4, 1973, Mr. Toal, at approximately
25 two o'clock P.M., was the undercover informant given by
26 Mr. Chin a small amount of heroine contained in two pieces

Exhibit 7

RALPH FINK & ASSOCIATES

140 NASSAU STREET, NEW YORK, N. Y. 10038, RECTOR 2-5066

1 of napkin paper as a sample of heroine which Mr. Chin might
2 be able to sell?

3 A Yes, he was.

4 Q Was the undercover informant informed on that day
5 by Mr. Chin that Mr. Chin could sell him approximately
6 a pound and a half of heroine for \$30,000?

7 A Yes, he was.

8 Q Did there come a time when the undercover
9 informant introduced Mr. Chin to the undercover agent,
10 Mr. Tse?

11 A Yes, he did.

12 Q Did there come a time, on approximately
13 November 21, 1973, when the undercover informant, Special
14 Agent Tse, in an undercover capacity, and the defendant,
15 Mr. Chin, had a meeting inside ^{Shavey Lee's Rest.} Shavey's on Mulberry
16 Street, New York?

17 A That is correct.

18 Q At that time, did the three of them, that is,
19 the defendant, the informant, and the agent have a further
20 conversation about the purchase of heroine by the undercover
21 agent?

22 A Yes, they did.

23 Q Did there come a time, a few days later, on
24 November 26, 1973, when Special Agent Tse met with the
25

defendant Chin at the same restaurant to discuss and negotiate further concerning the possible purchase by the agent of heroine from Mr. Chin?

A That is correct.

Q Following that meeting and on or about December 20, 1973, did there come a time when the undercover informant met with the defendant, Mr. Chin, and at that time discuss the possible purchase of a half pound of heroine for approximately \$8,000?

A That is right.

Q Were there also various other meetings and conversations between either the informant and Mr. Chin or the agent and Mr. Chin to which you have not testified before this Grand Jury?

A Yes, there were.

Q And at various of the meetings and conversations which were had among these three persons, were you a surveillance agent watching what was taking place?

A Yes, I was.

Q I will ask the Foreman to excuse you at this time.

FOREMAN: You are excused.

Q Oh, I am sorry, would you come back again? I did forget one question.

FOREMAN: You are still under oath.

Q During the course of the conversations between Mr. Chin and the agent and Mr. Chin and the informant, either one, did Mr. Chin mention that heroine which he was proposing to sell was coming from another person other than himself?

A Yes, he did.

Q And did he give the name of that person?

A Yes, he did.

Q All right, I will ask the Foreman to excuse you.

FOREMAN: You are excused.

(Witness excused.)

(Time noted 12:55 P.M.)

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2 J O H N T O A L, called as a witness, hav-
3 ing been duly sworn by the Foreman of the Grand
4 Jury, testified as follows:

5 FOREMAN: Have a seat, please.

6 THE WITNESS: Thank you.

7 BY MR. HOSKINS:

8 Q Would you state your name?

9 A John Toal, T-O-A-L.

10 Q And your occupation?

11 A Special Agent with the Federal Drug Enforcement
12 Administration.

13 Q Special Agent Toal, are you familiar with a
14 case involving Sir Kue Chin, also known as "Chan Kau"?

15 A Yes, I am.

16 Q Did you, in fact, appear before the December
17 regular Grand Jury of this Court and testify concerning
18 that case?

19 A Yes, I did.

20 Q Let me say two things to the Grand Jury and for
21 the record.

22 First, following the testimony of Special Agent
23 Toal before the December Grand Jury, that Grand Jury was
24 not asked to return an indictment. It simply heard the
25 testimony.

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2 That is why Mr. Toal is back again today. Much,
3 if not most of Mr. Toal's testimony, is going to be
4 hearsay.

5 The people who would be the direct witnesses
6 are undercover agents of the Drug Enforcement Administra-
7 tion, Steven Tse, who is in Seattle at the present time,
8 and an informant for the DEA. who is in the southern part
9 of the United States.

10 If you, as the Grand Jury, think that it is
11 necessary for those two persons to be produced, because
12 of the great distance in the first instance, I should
13 like to go ahead with the testimony of Mr. Toal for these
14 two men.

15 Would you mark this as Grand Jury Exhibit 1?

16 (So marked.)

17 Q Would you examine that transcript and tell us
18 if it is a true and accurate transcription of your testi-
19 mony before the December Grand Jury?

20 A (Perusing) Yes, it is.

21 Q I'm going to now read this short testimony to
22 the Grand Jury. I should like for you to listen to it,
23 Mr. Toal, and if there is any change, let me know at the
24 conclusion of the reading.

25 (Whereon, Grand Jury Exhibit 1 was read.)

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Q Mr. Toal, is there anything in that testimony which is inaccurate which you should like to change?

A November 4th, the time the informant received it, it was 11:15 P.M. and not 2:00 o'clock.

Q Is the rest of it accurate?

A Yes, it is.

Q Let me just ask you a couple of questions involving a little more detail about your testimony earlier.

At the November 4th meeting between the informant and the defendant, Mr. Chin, do you recall if that took place at the restaurant called Eng Yuet Fa?

A That is correct, on Nott Street.

Q You also testified that on November 21st the undercover informant and Special Agent Tse and the defendant had a meeting inside Shavey's -- I am not sure if that was in error in transcription?

A Yes, Shavey Lee's on Mulberry Street.

Q And, finally, I should like to ask you about a meeting which you did not testify about last time.

Directing your attention to December 12th of 1973, did the undercover informant and the defendant have a meeting at the Hong Gung Restaurant, 30 Pell Street, New York City?

A Yes, they did.

Q At that meeting, did the informant stay in the doorway of the restaurant when the defendant went inside the bar and spoke to another person?

A Yes, he did.

Q Did the defendant at that meeting tell the informant that there was heroin available at \$16,000.00 per pound?

A That is right.

Q I will ask the Foreman to excuse you.

FOREMAN: You may be excused.

(Witness excused.)

(Time noted, 3:15 o'clock P.M.)

J O H N T O A L, 1/9/75, resumed, testified further as follows:

BY MR. HOSKINS:

Q Just two questions, Mr. Toal.

The meeting of December 20, 1973, did that take place at Wah Sun Coffee Shop on Mott Street in New York City?

A At that place and another place.

Q That one other place was Wah Foon?

A Yes, sir.

Q And, finally, you testified that Mr. Chin gave

Certificate of Service

Aug 6, 1975

I certify that a copy of this brief and appendix has been mailed to the United States Attorney for the Southern District of New York.

Nathan J. Silverman